**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.474/2023
Mr.Arunkumar s/o Govindkumar Bhaiya and anr
..vs..
State of Mah., thr.PSO PS Gondia Rural, District Gondia

AND

CRIMINAL APPLICATION (BA) NO.475/2023
Mr.Arunkumar s/o Govindkumar Bhaiya and anr
..vs..
State of Mah., thr.PSO PS Gondia Rural, District Gondia

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri S.V.Manohar, Senior Counsel with Shri R.R.Vyas, Counsel for Applicants.
Shri Amit Agrawal, Counsel for the Complainant.
Shri M.J.Khan, Additional Public Prosecutor for the Non-applicant/ State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED : 28/06/2023
PRONOUNCED ON : 05/07/2023

1. Both these applications under Section 439 of the Code of Criminal Procedure are moved for grant of regular bail.

2. Applicants, Arunkumar s/o Govindkumar Bhaiya and Ajay s/o Champalal Bhutada, in Criminal Application No.474/2023, are the same applicants in Criminal Application No.475/2023.

3. In Criminal Application No.474/2023, the applicants have sought bail in connection with Crime No.574/2022 registered with Gondia Rural Police Station, district Gondia for offences punishable under Sections 406 and 420 of the Indian Penal Code.

Whereas, in Criminal Application No.475/2023, the applicants have sought bail in connection with Crime No.165/2023 registered with Gondia Rural Police Station, district Gondia for offences punishable under Sections 120-B, 403, 420, 405, 423, 425, and 421 read with Section 34 of the Indian Penal Code.

4. On 26.4.2023, the applicants are arrested and since then they are in jail.

5. The crime is registered on the basis of directions by learned Judicial Magistrate First Class under Section 156(3) of the Code of Criminal Procedure. An application under Section 156(3) of the Code of Criminal Procedure was filed by Jaiprakash Nathmal Bhattad (the complainant), one of shareholders of Maheshwari Solvent Extraction Limited Company (the said Company). The applicants are Directors of the said Company.

6. As per the allegations in the First Information Report, the said Company owns an immovable property bearing gat No.573/1/A/2 admeasuring 1397.10 meters within the jurisdiction of Gondia Municipal Council. The complainant, who was one of shareholders, is having his share in the immovable property. As per the allegations, the applicants, who are Directors, along with the other co-accused, on 30.12.2022, called a general meeting in order to discuss an issue of sale of the said immovable property and payment of outstanding dues of creditors and labourers. However, no Resolution was passed as votes were given against the decision. In spite of no Resolution was passed, the applicants, along with other co-accused, without taking any approval from the shareholders of the Company and without Resolution, sold the land of the Company for a very meagre price to one Dr.Rajendra Yashwant Vaidya, who is one of accused and, therefore, the complainant issued notice to the purchaser of the property and he came to know from reply that an agreement to sale was executed on 3.7.2020 regarding the sale of the said property. He filed Regular Civil Suit No.181/2021 for cancellation of the said sale. Said Rajendra Vaidya, who was purchaser, had also filed counter

claim for refund of the amount. From written statement of Rajendra Vaidya, the complainant came to know that the applicants, along with other co-accused, with common intention, had executed agreement to sale dated 3.7.2020 regarding the said immovable property and sale consideration of Rs.1,42,96,383/- was fixed. The purchaser had paid amount of Rs.1,56,96,383/- on different dates. However, the sale consideration was shown of Rs.70,96,383/- which was executed on 26.3.2021. Thus, the accused persons have misappropriated amount of Rs.86,00,000/- and thereby committed the offence. After registration of the crime, the applicants were arrested.

7. As per contentions of the applicants, the application under Section 156(3) of the Code of Criminal Procedure was filed on baseless allegations. In fact, a Resolution was passed in meeting on 30.12.2020 along with attendance sheet and valid papers. In the meeting, four subjects were discussed. The Resolution, regarding the sale of the property, was passed by majority. Even, the complainant was present in the meeting and his attendance was marked in the attendance sheet at serial No.38. Though the purchaser filed the written statement and counter claim,

the same were subsequently withdrawn. The pleadings in the counter claim show that the amount in cash was paid. The said property was not even mortgaged in the financial institution. The consideration, which was reflected in the sale deed, was duly credited in the account. The purchaser withdrawn the counter claim unconditionally. Sufficient to show that he has withdrawn his right of recovery of excess amount as no such amount was paid. Now, investigation of the crime is practically completed. The applicants are behind bars for considerable period. Further custody of the applicants is not required as nothing is to be recovered from them and, therefore, they be released on bail.

8. Learned Additional Public Prosecutor Shri M.J.Khan for the State strongly opposed these applications on the ground that three shareholders of the Company filed a civil suit for declaration that the sale deed executed in favour of Rajendra Vaidya is illegal and liable to be cancelled. During the investigation, the investigation officer has collected the sale deed which shows that total consideration amount was shown Rs.70,96,383/-. Whereas, the transaction took place for consideration of Rs.1,56,96,383/-. The applicants have misappropriated the amount of Rs.86,00,000/- and caused

the loss to the Company.

9. The complainant has also filed an intervention application and objected the applications on the ground that amount of Rs.86,00,000/- went unaccounted with a sole intention to make default and to cheat the shareholders and beneficiaries of the Company to receive an undue gain and also caused loss of substantial revenue and thereby committed the offence. Hence, the applications be rejected.

10. Heard learned Senior Counsel Shri S.V.Manohar for the applicants and learned Additional Public Prosecutor Shri M.J.Khan for the State.

11. Learned Senior Counsel Shri S.V.Manohar for the applicants, reiterated the contentions and submitted that the Resolution was passed by calling the meeting of the shareholders. The Resolution filed on record shows that total four subjects were discussed in the meeting. Insofar as the sale of the land is concerned, it was discussed that the Company does not have any plans for use of the land belonging to the Company situated at Kudwa gat No.573/1/A/2 and , therefore, it was decided to sale out the property. All shareholders were called and voting was taken place. The

majority votes were in favour of permitting the directors to sale out the land. Accordingly, the Resolution was passed. As far as the counter claim of the purchaser is concerned, the purchaser has initially contended that the transaction took place for Rs.1,56,96,383/-. However, the consideration amount was shown as Rs.70,96,383/- and subsequently the counter claim was withdrawn by him unconditionally which shows that false allegations are made against the applicants. Now the investigation is completed and, therefore, further custody of the applicants is not required. Learned Senior Counsel prays that the applicants be released on bail. Learned Senior Counsel submitted that if the applicants are granted bail, they will abide by conditions the court imposes.

12. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State, submitted that there is a *prima facie* material against the applicants which shows that the applicants have misappropriated amount of Rs.86,00,000/-. Considering the nature of the offence is economic offence, the applications for bail deserve to be rejected.

13. Learned counsel Shri Amit Agrawal for the complainant, vehemently submitted that there are limitations

on the courts in view of Section 212 of the Companies Act, 2013. The nature of the offence is economic offence. The applicants have shown less consideration amount and caused the loss to the Company as well as to the revenue and, therefore, the applications of the applicants deserve to be rejected. He further submitted that the Resolution, on which the applicants placed reliance, is also a fabricated document. As such, he submitted that the applications deserve to be rejected.

14. In support of his contentions, learned counsel Shri Amit Agrawal for the complainant placed reliance on following decisions:

1. P.Chidambaram vs. Directorate of Enforcement, reported in (2019)9 SCC 24;

2. Ashwini Kumar Patra vs. Republic of India, reported in 2021 SCC OnLine Orissa 438;

3. Y.S.jagan Mohan Reddy vs. Central Bureau of Investigation, reported in (2013)7 SCC 439;

4. Pankaj Grover vs. Directorate of Enforcement, reported in 2021(8) ADJ 349;

5. Serious Fraud Investigation Office vs. Nittin Johari and anr, reported in AIR 2019 SC 4380;

6. Parbatbhai Aahir alias Parbatbhai Bhimsinhhai Karmur and ors vs. State of Gujarat and anr, reported in (20179 SCC 641;

7. Nimmagadda Prasad vs. Central Bureau of Investigation, reported in AIR 2013 SC 2821, and

8. Centraum Financial Services Limited vs. State of NCT of Delhi and anr, reported in AIR OnLine 2022 SC 68.

On the basis of the catena of decisions, he submitted that considering the nature of the offence, which is economic offence, the Honourable Apex Court held that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. He submitted that in view of catena of decisions, the applications deserve to be rejected.

15. Having heard both the sides and perused the investigation papers, it reveals that the applicants are directors of the Company namely Meheshwari Solvent Extraction Limited which was formed in the year 1983. The crime was registered on the basis of report lodged by one of shareholders on allegation that the applicants, who are directors, entered into the agreement of sale with one Dr.Rajendra Vaidya, without passing any Resolution and sold out the property of the Company to a meagre amount. It is further alleged that though consideration amount was fixed as Rs.1,56,96,383/-, the consideration amount was shown as Rs.70,96,383/-. The purchaser initially filed the counter claim alleging that the consideration amount was accepted as

Rs.1,56,96,383/-. However, the consideration amount in the sale deed is shown as Rs.1,87,96,383/- and claimed the refund of the amount. Admittedly, the said counter claim was subsequently withdrawn unconditionally. The material allegation against the applicants is that they have sold out the property without passing any Resolution. During the investigation, the investigating officer has collected the documents which show that the meeting was held on 30.12.2020 wherein all the shareholders were called. In the said meeting, four subjects were discussed and subject No.4 was the sale of the land bearing gat No.573/1/A/2 admeasuring 1397.10 meters within the jurisdiction of Gondia Municipal Council situated at Kudwa. In the said meeting, 46 shareholders were present. The investigating officer has collected the ballot papers. Out of 46 persons, 31 shareholders gave their assent to the Resolution dated 30.12.2020. The shareholders, namely Balmukund Fafat, Shamsundar Fafat, Umadevi Fafat, Vina Fafat, and Jaiprakash Bhattad (the complainant), gave their dissent for the said Resolution. As maximum shareholders assented for he said Resolution, it was passed with majority.

16. Insofar as allegation regarding the forgery of the

said Resolution is concerned, the investigating officer has recorded the statements of the relevant witnesses including Naresh Bhutada, Vishnu Maheshwari, Pankaj Bhutada, Ashish Bhutada, Girish Kothari, Abhay Kothari, Aditya Maheshwari, and Amol Kothari, who have stated that they were present in the said meeting and four subjects were discussed and they have casted their votes on the issue of sale of the said property. Kashidevi Fafat, Vina Fafat, and Umadevi Fafat stated in their statements that on their behalf their proxy were present and they have signed the ballot papers. Thus, these statements show that the meeting was held and the Resolution was passed with majority.

17. Admittedly, the agreement was executed on 3.7.2020 and the Resolution was passed on 30.12.2020. Thus, the investigation papers show that the sale deed was executed after due Resolution was passed and the directors were given authority to sale out the said land.

18. Insofar as the allegation that consideration amount was fixed as Rs.1,56,96,383/-, the consideration amount in the sale deed is shown as Rs.70,96,383/-. The investigating officer has recorded the statement of the purchaser and the

prosecution relied upon the said statement which shows that amount of Rs.1,42,96,383/- was paid by him to the Mahendra Agrawal, who was mediator. Thus, the statement shows that he has paid Rs.76,96,383/- by cheque and Rs.70,00,000/- to Rs.72,00,000/- to one Mahendra Agrawal. Thus, his statement nowhere shows that this amount was paid to the applicants.

19. Learned counsel Shri Amit Agrawal for the complainant, placed reliance on catena of decisions wherein it is held that while considering bail applications regarding economic offence, the court has to take into consideration that grave offences are affecting economy of the country as a whole.

20. The above said aspect is recently considered by the Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51** wherein it is held that question for consideration is whether it should be treated as a class of its own or otherwise.

21. The above said issue has already been dealt with by the Honourable Apex Court in the case of **P.Chidambaram**

vs. Directorate of Enforcement cited *supra* after taking a note of the earlier decisions govern the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another and, therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field.

Paragraph No.23 in the decision of **P.Chidambaram vs. Directorate of Enforcement** cited *supra* is reproduced, as under:

> "Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial

irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

It has further been held that we are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the

Special Judge, CBI, New Delhi and, therefore, their presence in the custody may not be necessary for further investigation and released the appellant on bail.

22. Here, in the present case also, the investigation is practically completed and as such further custody of applicants is not required.

23. As far as the contention regarding the limitations, in view of Section 212(6) of the Companies Act, 2013 is concerned, the said provision indicates that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (offence covered under Section 447) of this Act shall be cognizable and no person accused of any offence under those Sections shall be released on bail or on his own bond unless (i) the public prosecutor has been given an opportunity to oppose the said application for such release and (ii) where the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

24. Thus, the above said limitation is similar to the limitation under Section 21(4) of the MCOC Act.

25. The Honourable Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Mah. and anr, reported in 2005 ALL MR (Cri) 1538 (SC)** held that the restriction imposed by Section 21 (4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Honourable Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provisions and what is required is that the satisfaction that

there are reasonable grounds for believing the accused to be not guilty. The phrase “reasonable grounds” should not be confused with the phrase “sufficient grounds”. It cannot be lost sight of the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Honourable Apex Court has observed in the case cited *supra* that it is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

26. In the light of the above principles, the same analogy can be applied to the present case as the similar provision is under Section 212(6) of the Companies Act, 2013. If the facts of the present case are considered, admittedly, the investigation papers show that the Resolution was passed before entering into the transaction of the sale of the land owned by the Company. As far as the allegation, regarding the receipt of the additional amount by the applicants is concerned, the statement of the purchaser nowhere shows that he has handed over the additional amount to the

applicants and the applicants have received the same.

27. In the light of the above and considering the nature of allegation levelled, further custody of the applicants is not required and, therefore, the applications deserve to be allowed by imposing certain conditions, as per order below:

ORDER

1) The criminal applications are **allowed**.

2) Applicants, Arunkumar s/o Govindkumar Bhaiya and Ajay s/o Champalal Bhutada, in connection with Crime No.574/2022 registered with Gondia Rural Police Station, district Gondia for offences punishable under Sections 406 and 420 of the Indian Penal Code be released on bail on their executing a P.R.Bond.

3) Applicants, Arunkumar s/o Govindkumar Bhaiya and Ajay s/o Champalal Bhutada, in connection with Crime No.165/2023 registered with Gondia Rural Police Station, district Gondia for offences punishable under Sections 120-B, 403, 420, 405, 423, 425, and 421 read with Section 34 of the Indian Penal Code, be released on bail on their executing a P.R.Bond.

4) The applicants shall execute a P.R.Bond in the sum of Rs.50,000/- by each of them with one solvent surety of the like amount by each of them.

5) The applicants shall not leave this country without prior permission of the trial court and shall surrender their passports before the investigating officer.

6) The applicants shall not indulge in the similar type of activities.

7) Contravention of any of conditions above leads to cancellation of the bail.

8) The criminal applications stand disposed of.

9) Since the main applications for grant of bail are disposed of, Criminal Application Nos.902 and 905/2023 also stand disposed of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!